

## PROJECT MANAGERS, CONTRACTS AND THE LAW

- Defining a body of commercial / legal knowledge for PMs across all disciplines.

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## CHARTERED ORGANISATION

- Public duty orientated
- Has the majority of practitioners as its members
- Is pre-eminent in its field, a unique profession "without significant overlap" with other bodies
- Members are professionally competent

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## PROFESSION - DEFINITION

- A **profession** is an occupation, vocation or career where specialized knowledge of a subject, field, or science is applied.<sup>[1]</sup> It is usually applied to occupations that involve prolonged academic training and a formal qualification. It is axiomatic that "professional activity involves systematic knowledge and proficiency."<sup>[2]</sup> Professions are usually regulated by professional bodies that may set examinations of competence, act as a licensing authority for practitioners, and enforce adherence to an ethical code of practice.

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## THE EMPLOYER'S PM

- Defines/decides project objectives
- Appoints advisors
- Chooses contract:
  - Suite (discipline) i.e. ICE, IChemE, MF/1, JCT, bespoke etc.
  - Type (D&B, target cost, managing contractor etc.)
  - Relationship: normal, partnering, framework etc.
- Manages the prequalification and tender processes
- Negotiates and appoints main contractor
- Manages the contract

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## PROFESSIONAL ADVISERS

- Administer the contracts on behalf of the Employer as RE or PM.
- Provide professional services e.g. design, QS, commercial
- Carry out the RE or PM's duties under the contract.

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## MAIN CONTRACTOR'S PM

- Makes presentations, completes prequalification submissions and tenders.
- Negotiates main contract
- Places back-to-back sub-contracts and defines interfaces
- Creates joint venture if required
- Manages contract and deals with routine matters and crises.

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## SUB-CONTRACTOR'S PM

- Tendering
- Negotiating sub-contract
- Managing

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## CHOICE OF SUITE

- JCT, RIBA – building
- ICE, GC Works – civil engineering
- MF/1 – E&M, computers
- I Chem E – process engineering
- FIDIC – civil engineering and process plant o'seas
- NEC – civil engineering and everything
- PPC 2000 – Partnering

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## OBJECTIVES

- Price Certainty
- Lowest cost
- Performance: volume of output, efficiency
- Time certainty
- Shortest time
- Control over design
- Control over method
- Control over changes

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## CHOICE OF TYPE

- Design and Build (single or two-stage)
- Remeasured quantities
- Fixed price (activities)
- Target cost
- EPC (Engineer, Procure and Construct)
- Managing Contractor
- Construction Management

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## CHOICE OF RELATIONSHIP

- Traditional – Employer/Contractor,
- Partnering
- PFI: Agency/Special Purpose Vehicle/ Contractor/ Bank
- Through life service provision

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## COVERAGE 1

- |   |  |
|---|--|
| • <a href="#">1 Documents and Definitions</a>     | • <a href="#">7. Subordinate Contractors</a>                   |
| • <a href="#">2. Amount Payable</a>               | • <a href="#">8. Project Management</a>                        |
| • <a href="#">3. Contractor's Deliverables</a>    | • <a href="#">9. Site Administration</a>                       |
| • <a href="#">4. Manner of Execution</a>          | • <a href="#">10. Pre Construction Services and Submittals</a> |
| • <a href="#">5. Employer's Rights and Duties</a> | • <a href="#">11. Approvals and Tests</a>                      |
| • <a href="#">6. Engineer's Status and Duties</a> | • <a href="#">12. Claims and Variations</a>                    |

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## COVERAGE (2)

- [13. Payments and Certificates](#)
- [14. Risks and Insurance](#)
- [15. Defects Liability](#)
- [16. Special Works](#)
- [17. Ongoing Maintenance](#)
- [18. Emergencies and Termination](#)
- [19. Disputes Resolution](#)
- [20. Legal and Interpretation](#)
- [21. Securities and Sanctions](#)
- [22. International](#)

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## WHY USE STANDARD FORMS?

- Wrong discipline – wrong conditions
- Risk allocation
- Familiarity
- Legal acceptance
  - Accepted as fair
  - Case law
  - Legal terminology

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## The Project Manager's Commercial/'Legal' Knowledge

- Comparing suites and types
- Contract law re formation of the contract
- Liability, PI Insurance
- Legal instruments – warranties, insurances, bonds etc.
- Pitfalls in letters of intent
- Legal terminology
- Understanding of the wider framework
  - Corporate manslaughter act (governance)
  - Environmental disruption
  - CONDAM - Health and safety

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## References to Law in APM's 49 'Competences'

- 2.8.8. – copyright
- 2.24 Procurement only applies to Client's PM. Supply oriented. No mention of types or suites of contracts or different relationships.
- 4.5 – 'Legal awareness' competence.

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## The Project Manager's Commercial/'Legal' Knowledge

- Understanding of the wider Legal Framework (2)
  - HGCRA
  - Areas likely to give rise to a dispute
  - Dispute resolution: arbitration, litigation, adjudication

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## *RICS – Legal Issues in Project Management* 2003

- A previous research study concluded that PM which started with engineering and construction now spans most industrial sectors.
- Studies have shown that is still fluid in its conceptual and theoretical knowledge base, particularly in construction.
- Understanding the legal issues is a vital aspect of underpinning this knowledge base.

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## CONCLUSION

The APM must take full account of the importance of contractual and legal issues in its Competences Framework and the means of providing it for the benefit of Project Managers and the success of its application for Chartered Status.

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## HOW TO PROVIDE THE CONTRACT KNOWLEDGE

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## WHY SHOULD PMs BOTHER?

- The whole contract structure must work
- Things will go wrong
- Ignorance of the contract may be the cause
- PMs must react decisively and confidently
- He cannot rely on others
- Good for his employers and his own career

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## What it means for YOU

- Real contract knowledge bridges the discipline gap
- Easier to change disciplines
- Good for your employers

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## IN A NUTSHELL

- A project manager manages a contract for his organization to achieve its objectives.

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## THROUGH-LIFE SERVICE PROVISION

- Transactional – multi party, expensive and lengthy pre-award
- Infrastructural complexity, stakeholders
- Performance – difficult to define and changes
- Professional services - numerous
- Extended contract periods – corporate and political change
- Incentivisation – easily manipulated

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